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COURT OF CRIMINAL APPEALS
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NO. PD-0324-17

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
8/7/2017
DEANA WILLIAMSON, CLERK

THE STATE OF TEXAS,
Appellant,

v.

ROGER ANTHONY MARTINEZ,
Appellee.

On Appeal from Cause Number 14-06-28047-A
In the 24th Judicial District Court of Victoria County and
Cause Number 13-15-00069-CR
In the Court of Appeals for the Thirteenth Judicial District of Texas.

BRIEF FOR THE STATE

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ORAL ARGUMENT NOT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. 38.1(a) (2003), the parties to the suit are as follows:

APPELLANT	**The State of Texas**
APPELLEE	**Roger Anthony Martinez**
TRIAL JUDGE	**The Honorable Eli Elmo Garza** **377th Judicial District Court** **Victoria, Texas**
TRIAL PROSECUTOR	**Brendan Wyatt Guy** State Bar No. 24034895 Assistant Criminal District Attorney 205 N. Bridge St. Ste 301 Victoria, Texas 77901-6576
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IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS

THE STATE OF TEXAS,……Appellant

v.

ROGER ANTHONY MARTINEZ,……...Appellee

* * * * *

STATE'S BRIEF ON THE MERITS

* * * * *

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

Comes now the State of Texas, by and through its Criminal District Attorney for Victoria County, and respectfully presents to this Court its brief on the merits in the named cause.

STATEMENT OF THE CASE

Appellee was charged by indictment on June 26, 2014 in Cause Number 14-06-28047-A with one count of Possession of a Controlled Substance in a Correctional Facility and one count of Possession of a Substance in Penalty Group 1 in an amount of less than 1 gram. [CR-I-5]. On January 26, 2015 the Appellee filed a motion to suppress. [CR-I-17-20]. A hearing was held on that motion to suppress on February 4, 2015. [RR-I-

1]. That same day the trial court, with the Honorable Eli Garza presiding, granted Appellee's motion to suppress with a written order. [CR-I-22]. On February 5, 2015, the State requested written findings of fact and conclusions of law. [CR-I-23-24]. On February 6, 2015, the trial court issued its written findings of fact and conclusions of law. [CR-I-26-28]. The State timely filed its notice of appeal on February 9, 2015. [CR-I-29-32]. On October 1, 2015, the Thirteenth Court of Appeals (hereafter Court of Appeals) affirmed the trial court ruling granting the motion to suppress. *State v. Martinez,* No. 13-15-00069-CR, 2015 WL 5797604 (Tex. App.-Corpus Christi 2015), *vacated,* No. PD-1337-15, 2016 WL 7234085 (Tex. Crim. App. 2016)(not designated for publication).

This Honorable Court declined the State's petition for discretionary review but granted its own petition, and on December 14, 2016 vacated the ruling of the Court of Appeals and ordered the case remanded to the Court of Appeals with instructions to remand the case to the trial court to prepare additional findings of fact on the question of whether there was sufficient circumstantial evidence provided by the testimony of the supporting officers to establish that the arresting officer had probable cause to arrest. See *State v. Martinez*, No. PD-1337-15, 2016 WL 7234085 at 8 (Tex. Crim. App. 2016)(not designated for publication)(plurality op).

On January 26, 2017 the Court of Appeals abated the appeal and remanded the case back to the trial court with instructions to supplement its findings of fact. [SCR-I-6-7]. On February 2, 2017 the trial court filed its supplemented findings of fact which concluded that even in considering the testimony of the supporting officers there was insufficient evidence to establish that the arresting officer had probable cause. [SCR-I-8-11]. The Court of Appeals reinstated the appeal and on March 16, 2017 again affirmed the trial court's suppression ruling. *State v. Martinez,* No. 13-15-00069-CR, 2017 WL 2200298 (Tex. App.-Corpus Christi 2017, pet. granted)(mem. op. on remand not designated for publication).

On April 11, 2017 the State submitted a petition for discretionary review to the Court of Criminal Appeals. On July 26, 2017 the Court of Criminal Appeals granted the State's petition.

ISSUES PRESENTED

I. Did the Court of Appeals erroneously decide an important question of state law in a way that conflicts with the applicable decisions of the Court of Criminal Appeals, by finding that the knowledge of supporting officers cannot be used to establish probable cause?

II. Did the Court of Appeals fail to conduct the required *de novo* review of whether the evidence known to Officer Quinn was sufficient to establish probable cause?

STATEMENT OF THE FACTS

Appellee was indicted on June 26, 2014 for Possession of a Controlled Substance in a Correctional Facility and Possession of a Substance in Penalty Group 1 in an amount of less than one gram. [CR-I-5]. On January 26, 2015 Appellee filed a motion to suppress. [CR-I-17-20]. The trial court conducted a hearing on this motion on February 4, 2015. [RR-I-1].

At the hearing the State called Javier Guerrero, formerly of the Victoria Police Department. [RR-I-7-8]. Officer Guerrero established that on January 5, 2014 at approximately 11:40 in the evening he met the Appellee when Officer Guerrero was called out to the G&G Lounge to investigate a possible fight in the parking lot of that business. [RR-I-9-10].

Officer Guerrero then described how he arrived at the back parking lot of that location and observed the Appellee and another individual arguing. [RR-I-10-11]. Officer Guerrero then established he was the first office on the scene, and that Officers Ramirez, Dial, and Quinn also came to the scene. [RR-I-11].

Officer Guerrero then confirmed the confrontation between the two individuals in the parking lot was strictly verbal, but that the two people were screaming at each other. [RR-I-12]. Officer Guerrero also established that he believed the Appellee was intoxicated due to the Appellee having

difficulty standing and due to the smell of alcohol on Appellee's breath. [RR-I-12]. Officer Guerrero also noted that the Appellee's eyes were "real glassy" and that the Appellee's voice was "slurred." [RR-I-13]. Officer Guerrero then characterized Appellee's behavior towards him as "very aggressive" and described how the Appellee would not let the officers talk. [RR-I-13]. Officer Guerrero then confirmed that the odor of alcohol was present on both Appellee's breath and person. [RR-I-14].

Officer Guerrero then established that the Appellee was arrested for public intoxication by Officer Quinn. [RR-I-16]. Officer Guerrero also established that he personally witnessed the arrest and did not observe any misconduct by Officer Quinn. [RR-I-17].

Officer Guerrero also testified that the parking lot was in use, that it had major roadways nearby, and that cars were able to freely access the parking lot. [RR-I-17].

On re-direct, Officer Guerrero explained he was about two feet away from the Appellee during the investigation. [RR-I-24]. Officer Guerrero also established that the Appellee did not explain how he had gotten to the G&G Lounge and did not appear to be in a condition where he could safely walk home. [RR-I-25].

The State then called Officer Timothy Ramirez of the Victoria Police Department. [RR-I-26-27]. Officer Ramirez explained that on January 5, 2014 he was one of the officers called to investigate a possible fight at the G&G Lounge. [RR-I-27-28].

Officer Ramirez confirmed meeting the Appellee that evening and stated he believed the Appellee was intoxicated that night. [RR-I-29]. Officer Ramirez then described the Appellee as having slurred speech, a swayed stance, red and glassy eyes, and having the odor of alcohol emitting from his breath and person. [RR-I-29]. Officer Ramirez further established he was within two to three feet of the Appellee when he made those observations. [RR-I-29].

Officer Ramirez then described how Appellee's behavior was "very aggressive and belligerent", noted that Appellee would not cooperate with the police investigation, and indicated that the Appellee was yelling at the police. [RR-I-29].

Officer Ramirez then noted that the parking lot was approximately 15 feet away from a roadway that was in use and approximately 15 to 20 feet from South Laurent. [RR-I-31-32]. Officer Ramirez then explained that South Laurent gets "very heavy traffic" and that it can get heavy traffic even

as late in the evening as the time when Officer Ramirez made contact with the Appellee. [RR-I-32].

Officer Ramirez then noted that there was no one present who was fit to take care of the Appellee and that the Appellee did not ask to have someone come and pick him up or ask to call for a taxi. [RR-I-32]. Officer Ramirez also stated that the Appellee was not in a fit condition to drive or to walk home. [RR-I-32-33].

Officer Ramirez then confirmed witnessing the actual arrest of the Appellee by Officer Quinn. [RR-I-33]. Officer Ramirez then stated he did not observe any misconduct on Officer Quinn's part and noted that none of the other officers present at the scene disagreed with Officer Quinn's arrest decision. [RR-I-33].

On re-direct, Officer Ramirez described how the police were unable to effectively talk with the Appellee due to his continual yelling of obscenities and his refusal to follow police instructions. [RR-I-35-36].

After argument, the trial court issued its ruling. [RR-I-53]. The trial court declined to make any finding as to improper actions by Officer Ramirez or Officer Guerrero. [RR-I-54]. Nevertheless, the trial court granted Appellee's motion to suppress. [RR-I-55].

The trial court subsequently issued written findings of fact and conclusions of law. [CR-I-26-28]. The trial court found this incident occurred outside the D&G Lounge (a bar) at approximately 11:30 at night and that there was a verbal disturbance in process when the police arrived. [CR-I-26]. The trial court also concluded that Officer Quinn was the only officer who affected the arrest. [CR-I-28].

On October 1, 2015, the Court of Appeals affirmed the trial court ruling granting the motion to suppress. *Martinez,* 2015 WL 5797604. On December 14, 2016 this Honorable Court reversed the Court of Appeals ruling and, finding that both the trial court and the Court of Appeals had erred by categorically refusing to consider the testimony of Officers Ramirez and Guerrero, ordered the Court of Appeals to remand the case back to the trial court to make supplemental findings of fact concerning whether the testimony of Officers Ramirez and Guerrero established that Officer Quinn had probable cause to arrest the Appellee. *Martinez*, PD-1337-15 at 7-8.

On remand the trial court issued supplemental findings of fact. [SCR-I-8-11]. The trial court found that both Officer Guerrero and Officer Ramirez perceived several indications of intoxication on the Appellee with Officer Guerrero observing the odor of alcohol, swaying, and slurred speech [SCR-I-9] while Officer Ramirez observed the Appellee to have slurred

speech and a swayed stance. [SCR-I-10]. The trial court also found that Officer Quinn heard the Appellee screaming and yelling. [SCR-I-9]. And the trial court reiterated its earlier finding that there was no misconduct on the part of Officers Guerrero and Ramirez in this incident. [SCR-I-11]. Nevertheless, the trial court refused to find that Officer Quinn was present at the time when Officers Guerrero and Ramirez perceived signs of intoxication on the Appellee. [SCR-I-11]. Thus the trial court reaffirmed its earlier ruling to grant suppression in this case. [SCR-I-11]. The trial court did not issue any findings of fact concerning the evidence the State had presented that the offense happened in a public place or any findings of fact concerning the evidence the State presented that the Appellee was a danger to himself or others. [SCR-I-8-11].

On March 16, 2017 the Court of Appeals again affirmed the trial court's suppression ruling. *Martinez*, 2017 WL 2200298 at 7. The Court of Appeals decision did not consider any of the trial court's findings as to what was observed by Officers Guerrero and Ramirez in determining whether the police had probable cause to arrest. *Id.* at 6. The Court of Appeals opinion also asserted that the Court of Appeals had conducted a *de novo* legal review without providing any details or legal analysis. *Id.* at 7.

SUMMARY OF THE ARGUMENT

The Collective Knowledge Doctrine which allows police to utilize the sum of all knowledge known to all cooperating officers in an investigation to determine if there was probable cause to arrest is a well established part of Texas law. Unfortunately, the Court of Appeals disregarded the relevant Court of Criminal Appeals precedent and instead of considering the collective knowledge of all the cooperating officers in this case, only considered the knowledge known to the officer who performed the actual physical arrest, Officer Quinn. This was plain error.

If the Court of Appeals had considered the collective knowledge of all of the cooperating officers rather than just considering what was known to Officer Quinn then the Court of Appeals would have found the police had more than enough evidence to establish probable cause to arrest. The trial court's findings of fact establish that the two supporting officers, Officers Guerrero and Ramirez, observed multiple indications that the Appellee was intoxicated in a public place in a manner that makes him a danger to himself or others. This information in conjunction with what the trial court found that Officer Quinn observed is more than enough evidence to establish probable cause. Thus the Court of Appeals' refusal to correctly apply

established Court of Criminal Appeals precedent caused clear harm to the State that warrants reversal.

The Court of Appeals attempts to justify its refusal to consider the observations of Officers Guerrero and Ramirez on the grounds that there is no evidence that either Officer Guerrero or Ramirez relayed any of their observations to Officer Quinn. Even if that fact is true, it is immaterial because there is no requirement under the Collective Knowledge Doctrine that the supporting officers conveyed their own knowledge to the arresting officer. Quite the contrary: the Court of Criminal Appeals precedent in this matter is very clear that reviewing courts are to look to the sum of knowledge possessed by all the cooperating officers, not just what was known by the arresting officer in determining if the police have probable cause.

In this case the trial court's findings of fact make it abundantly clear that Officers Guerrero and Ramirez were supporting Officer Quinn's investigation and indeed that Officers Guerrero and Ramirez were an integral part of the arrest team who had knowledge of the circumstances of the arrest. Thus Officers Guerrero and Ramirez's knowledge should have been considered in determining whether or not the police had probable cause

to arrest in this case regardless of whether they relayed any of their knowledge to Officer Quinn.

Therefore since the Court of Appeals misapplied well established Texas law and did so in a way that caused clear harm to the State, the Court of Appeals decision should be reversed.

In the alternative, even if the Collective Knowledge Doctrine does not apply, the Court of Appeals still committed reversible error by failing to conduct the required *de novo* analysis as to whether Officer Quinn himself had probable cause to arrest the Appellee based on the facts the trial court determined were known to him.

Whether the police had probable cause to perform an arrest is a question that must be reviewed *de novo.* Unfortunately, in this case the Court of Appeals failed to perform the required *de novo* analysis. Instead the Court of Appeals erroneously treated the trial court's legal determination that Officer Quinn lacked probable cause to arrest the Appellee as a finding of fact and thus deferred to the trial court's finding rather than conduct the required *de novo* analysis.

To the extent that the Court of Appeals addressed its obligation to conduct a *de novo* review at all, all the Court of Appeals did was provide a single conclusory statement asserting that the Court of Appeals had

conducted the required *de novo* analysis. This single sentence did not even delineate what legal issues the Court of Appeals considered for their alleged *de novo* review much less provide any legal reasoning or analysis. As such this single sentence was wholly inadequate to establish that the Court of Appeals conducted the required *de novo* review on the question of whether Officer Quinn had probable cause and especially when weighed against the previous statements in the Court of Appeals' opinion where the Court of Appeals explicitly acknowledged that it was deferring to the trial court's determination that Officer Quinn lacked probable cause.

If the Court of Appeals had conducted the required *de novo* analysis they would have been forced to conclude that Officer Quinn did in fact have probable cause to arrest the Appellee for public intoxication. The trial court found that Officer Quinn observed the Appellee yelling and screaming and also found sufficient facts to establish as a matter of law that this offense occurred in a "suspicious place" (specifically that the offense occurred outside a bar, late at night, with an ongoing verbal disturbance in progress when the police arrived.) Both the fact that the Appellee was yelling and screaming and the fact that the offense occurred in a public place are facts that can be used to establish probable cause, and these facts taken in

conjunction are more than sufficient to establish that Officer Quinn had probable cause in this case.

As such the State was clearly harmed by the failure of the Court of Appeals to conduct the required *de novo* review in this case, and therefore that failure constitutes reversible error.

ARGUMENT

I. The Court of Appeals committed reversible error by disregarding established precedent that the knowledge of supporting officers can be used to establish probable cause to arrest under the Collective Knowledge Doctrine.

The "Collective Knowledge Doctrine", which allows police officers to reply upon the collective knowledge of all officers participating in an investigation to establish probable cause to arrest, is well established under Texas law. This Honorable Court previously held in the *Pyles* case that "when there has been some cooperation between law enforcement agencies or between members of the same agency, the sum of the information known to the cooperating agencies or officers at the time of an arrest or search by any of the officers involved is to be considered in determining whether there was sufficient probable cause." See *Pyles v. State*, 755 S.W. 2d 98, 109 (Tex.Crim. App. 1988)(emphasis added).

Nor is *Pyles* the only case where this Honorable Court has permitted law enforcement agents to rely upon their "collective knowledge" to justify a detaining action. The *Derichsweiler* case established that when evaluating whether the police have reasonable suspicion to detain a suspect, the "detaining officer need not be personally aware of every fact that objectively supports a reasonable suspicion to detain". See *Derichsweiler v. State*, 348 S.W. 3d 906, 914 (Tex. Crim. App. 2011). Rather reviewing courts are to look to "the cumulative information known to the cooperating officers at the time of the stop." *Id*.

Thus it is clear from both *Pyles* and *Derichsweiler* that Texas law permits police officers to rely on the collective knowledge of all cooperating officers to determine whether the police have sufficient cause to detain or arrest a suspect. This is sensible and necessary law which helps guarantee effective law enforcement by allowing the police to rely upon all information known to participating officers and thus insures that police officers are more likely to make correct arrest decisions while also preventing absurd, unjust results of criminals, whom the police collectively have probable cause to arrest, going free simply because the officer who performed the actual physical detention of the suspect did not personally know everything that his supporting officers knew.

Nor does the Collective Knowledge Doctrine represent any sort of threat to the rights of our citizenry. Under this doctrine police still must have reasonable suspicion to stop/probable cause to arrest a suspect for that stop/arrest to be legal. Thus the public is still fully protected against arbitrary arrest, and as such there is no legitimate reason for the Court of Appeals to ignore established Court of Criminal Appeals' precedent and disregard the Collective Knowledge Doctrine. Unfortunately, in the present case the Court of Appeals did exactly that.

The Court of Appeals' opinion focused not on what was known to the investigating officers as a whole (the inquiry that would be required of the Court of Appeals under the Collective Knowledge Doctrine) but instead centered solely on what was known to the officer who performed the actual physical arrest, Officer Quinn. In particular the Court of Appeals identified the "central fact issue" of the case to be whether Officer Quinn observed or was informed that the Appellee was committing a crime. See *Martinez*, 2017 WL 2200298 at 5. Thus clearly the Court of Appeals was not applying the Collective Knowledge Doctrine since if they had applied the Collective Knowledge Doctrine the relevant inquiry would have been not what Officer Quinn knew, but rather what all the cooperating officers (Officers Quinn, Guerrero, and Ramirez) knew.

The Court of Appeals' opinion also relied heavily on the trial court's findings that there was no evidence that Officer Quinn was present when Officers Guerrero and Ramirez observed indications of intoxication on the Appellee. *Martinez,* 2017 WL 2200298 at 6. This likewise confirms that the Court of Appeals was refusing to apply the Collective Knowledge Doctrine in this case, since whether Officer Quinn was present when Officers Guerrero and Ramirez made their own observations about the Appellee would only be material, if whether Officer Quinn observed the Appellee's intoxicated behavior was the only way the police could establish probable cause, and that is simply not the law under the Collective Knowledge Doctrine.

The Court of Appeals opinion also stressed that the court "cannot find any trustworthy information that Quinn relied on to make an arrest", that the court "cannot find one piece of objective data demonstrating 'the totality of the circumstances' faced by Quinn", and that "Quinn had no knowledge that the defendant probably committed the offense of public intoxication." *Id.* at 6. As with their emphasis on the trial court's finding that there was no evidence that Officer Quinn was present when Officers Guerrero and Ramirez made their observation these findings also show that the Court of Appeals was only considering what was known to Officer Quinn and thus

was refusing to consider what was known to Officers Guerrero and Ramirez, despite the Collective Knowledge Doctrine making Officers Guerrero and Ramirez's observations just as relevant as Officer Quinn's for establishing probable cause. Thus it is manifest that the Court of Appeals disregarded existing Texas law concerning the Collective Knowledge Doctrine in conducting its review of this case.

If the Court of Appeals had correctly followed the precedents concerning the Collective Knowledge Doctrine that were set down in *Pyles* and reaffirmed in *Derichsweiler* then the Court of Appeals would have been forced to conduct a very different legal analysis. It would have considered not just what the trial court established was known to Officer Quinn but also what the trial court established was known to Officers Guerrero and Ramirez, and if the Court of Appeals had done so then it would have been forced to conclude that there was probable cause to arrest the Appellee because the observations of Officers Guerrero and Ramirez (as determined by the trial court) were more than sufficient in conjunction with the observations of Officer Quinn (as determined by the trial court) to establish probable cause to arrest the Appellee for the offense of public intoxication.

Probable cause is a low standard of proof that only requires a "fair probability" or "a substantial chance of criminal activity, not an actual

showing of such activity." See *Illinois v. Gates*, 462 U.S. 213, 243 n.13 (1983); *Parker v. State*, 206 S.W.3d 593, 599 (Tex. Crim. App. 2006). Furthermore, evidence as sparse as red watery eyes, slurred speech, and swaying has been upheld as sufficient to establish probable cause that a suspect was intoxicated. See *State v. Villarreal*, 476 S.W. 3d 45, 50 (Tex. App.-Corpus Christi 2014) *aff'd*, 475 S.W. 3d 784 (Tex. Crim. App. 2014). With that legal framework in mind it is clear that the trial court's findings provided overwhelming grounds to establish the police had probable cause that the Appellee was intoxicated if the trial courts findings as to what Officers Guerrero and Ramirez observed are included with what the trial court found Officer Quinn to have observed.

The trial court found credible Officer Guerrero's testimony that the Appellee had an odor of alcohol, slurred speech, and was swaying. [SCR-I-9]. The trial court likewise found credible Officer Ramirez's testimony that the Appellee had slurred speech and was swaying. [SCR-I-10]. And the trial court found that Officer Quinn heard the Appellee "yelling and screaming" [SCR-I-9] and concluded that this incident occurred outside a bar, late at night and that there was a verbal disturbance under way when the police arrived at the location. [CR-I-26]. Evidence that a defendant had slurred speech, an odor of alcohol, was swaying, and was yelling and

screaming at another person outside a bar late at night is clearly more than enough to meet the low threshold of probable cause that the defendant was intoxicated in a public place and to such a degree that the defendant was a danger to himself or others. As such if the Court of Appeals had correctly applied established Court of Criminal Appeals' precedent on the Collective Knowledge Doctrine then the Court of Appeals would have concluded that the police did have probable cause, and it would have reversed the trial court's ruling.

The Court of Appeals opinion attempts to justify not applying the Collective Knowledge Doctrine in this case by distinguishing the *Willis* and *Astran* cases (both cases where suspects were physically arrested by police officers other than the officer who actually observed the suspect commit the suspected criminal activity) on the grounds that in both those cases the supporting officer relayed his observations to the arresting officer. See *Martinez*, 2017 WL 2200298 at 5; *Willis v. State*, 669 S.W. 2d 728, 730 (Tex. Crim. App. 1984); *Astran v. State*, 799 S.W. 2d 761, 764 (Tex. Crim. App. 1990). But nothing in *Astran* or *Willis* requires that a supporting officer relayed his own observations to the arresting officer to be considered part of the arrest team. Thus there is no justification to rewrite Texas law on the Collective Knowledge Doctrine to impose such a requirement.

The test as established in *Astran* for when a "viewing officer" who has knowledge of the offense but does not actually carry out the physical arrest itself can be considered the arresting officer for the purposes of Article 14.01 of the Texas Code of Criminal Procedure, is: 1) whether the viewing officer was so much a part of the arrest or such an integral part of the arrest team that they effectively participated in the arrest; and 2) whether the viewing officer was substantially aware of the circumstances of the arrest. See *Astran,* 799 S.W. 2d at 764. Thus there is no explicit requirement that the viewing officer relayed his observations of criminal conduct to the arresting officer. Certainly a viewing officer relaying their observations to the arresting officer is one way in which the viewing officer could establish themselves as an integral part of the arrest team, but that is hardly the only way a viewing officer could establish they are an integral part of the arrest team.

Furthermore, *Pyles and Derichsweiler* (the two leading Texas cases on the Collective Knowledge Doctrine) both explicitly reject the idea that a viewing officer must actually relay their observations to the arresting officer before the viewing officer's knowledge can be considered as part of the collective knowledge of the police in the case.

Pyles explicitly holds that in evaluating whether there is sufficient probable cause to arrest, reviewing courts are to look to "the sum" of the information known "by any of the officers involved". *Pyles*, 755 S.W. 2d at 109. If reviewing courts are permitted to consider the sum of all information known by all of the officers involved in the investigation then plainly there is no requirement for the viewing officers to have relayed their own observations to the arresting officer before their observations can be considered. The viewing officer's knowledge can be considered, regardless of whether it was passed on to the arresting officer or not, so long as the viewing officer was a cooperating officer in the investigation.

Likewise in *Derichsweiler*, this Honorable Court held that "the detaining officer need not be personally aware of every fact that objectively supports reasonable suspicion to detain" and that instead it is the "cumulative information known to the cooperating officers at the time of the stop" that is to be considered in determining if reasonable suspicion exist. Thus obviously it is not necessary for the viewing officer to have relayed their observations to the detaining officer. If there was such a requirement then the detaining officer would have to be personally aware of every fact, since they would have to at least be told what the other officers knew before

they could act, but instead reasonable suspicion to detain can be established through the sum of all knowledge by all cooperating officers in the case.

As such both *Pyles* and *Derichsweiler* make it clear that there is no justification for the Court of Appeals to disregard the knowledge of Officers Guerrero and Ramirez simply because they did not relay their knowledge of the case to Officer Quinn. All that was required for their knowledge to be considered in determining if there was probable cause to arrest or not was whether they were cooperating officers in this investigation and the findings of the trial court make it clear that both officers did support the investigation.

In particular the trial court found that Officer Guerrero was the first man on the scene and Officer Ramirez was the second man on the scene. [SCR-I-9], that a disturbance was going outside the bar when the officers arrived, and that the officers made contact with the Appellee. [CR-I-26]. The trial court also found that both Officer Guerrero and Officer Ramirez noticed multiple indications of intoxication on the Appellee including an odor of alcohol, slurred speech, swaying. [SCR-I-9-10]. And the trial court further confirmed the Appellee was acting in a belligerent manner by "yelling and screaming." [SCR-I-9]. The trial court also notes that Officer Guerrero witnessed Officer Quinn make the call to arrest the Appellee. [CR-

I-29]. Thus the trial court's findings clearly establish that both Officer Guerrero and Ramirez were cooperating officers in this investigation and were an integral part of the arrest team. They may not have been the officer who made the actual decision to arrest the Appellee or the officer who actually placed physical handcuffs on the Appellee, but Officer Guerrero and Officer Ramirez were both present at the location, providing backup for another officer who was having to investigate a suspect who was displaying signs of intoxication and acting in a loud, belligerent manner, and observed numerous signs of intoxication themselves while at the scene.

Back-up officers obviously play a critical part in any arrest. The presence of back-up officers at an arrest scene helps discourage the arrestee from trying to resist and makes intervention by third parties less likely (since they would have to fight multiple officers instead of just one). The presence of back-up officers also ensures the arresting officer will have immediate support if the arrestee attempts to fight, flee, or destroy evidence. Back-up officers also enable the arresting officer to focus his full attention on enacting the arrest, and back-up officers provide witnesses to the behavior of the arresting officer, who can help address any accusations against that officer's conduct while also helping to corroborate any statements made by the arrestee. (This is particularly critical in cases such as this one where the

arrest was not record on video.) [CR-I-24]. Thus on-scene backup officers are just as much a part of any arrest as the officer who actually physically detains the suspect and as such both Officer Guerrero and Ramirez were clearly a key part of the arrest team.

It is also clear from the trial court's findings that both Officer Guerrero and Officer Ramirez were fully aware of the circumstances of the arrest. The trial court determined that these two officers were the first and second man at the arrest scene [SCR-I-9], so they would have had full knowledge of where, when, and under what circumstances the arrest happened. The trial court also found that both of them witnessed the Appellee showing obvious signs of intoxication outside of the bar that night. [SCR-I-9-10]. And since Officers Guerrero and Ramirez were the only police officers who testified at the hearing, the trial court's determination that there was a verbal disturbance underway when the officers arrived, that the disturbance was occurring outside of a bar late at night [CR-I-26], and that it was Officer Quinn who ultimately arrested the Appellee [CR-I-28] all must be imputed to the testimony of Officers Guerrero and Ramirez. (Both of whom testified to these very facts. [RR-I-9-12, 16-17, 27-28, 33]. Thus Officers Guerrero and Ramirez were also clearly aware of the circumstances of the arrest.

Since Officer Guerrero and Officer Ramirez were an integral part of the arrest team who were fully aware that Appellee was intoxicated in a public place and were cooperating officers in this investigation the two officers fully satisfied both of the *Astran* prongs (establishing that they both qualify as "arresting officers" for the purposes of Article 14.01). The two officers also both clearly qualified as "cooperating officers" in this investigation (thus satisfying the requirements set down in *Pyles* and *Derichsweiler* for their observations to be considered as part of the sum of police knowledge in determining if there was probable cause to arrest the Appellee.) Thus their observations (established as true historical fact by the trial court) should have been considered in determining if there was probable cause to arrest the Appellee.

If the Court of Appeals had correctly applied the Collective Knowledge Doctrine in this case as it was obligated to do under existing Court of Criminal Appeals precedent then it would have found, pursuant to that doctrine, that the police had sufficient knowledge through the combined knowledge of Officers Guerrero, Ramirez, and Quinn (as established by the trial court in its findings of fact) to establish probable cause to arrest the Appellee for the offense of public intoxication. Accordingly, the failure of

the Court of Appeals to apply the Collective Knowledge Doctrine constitutes reversible error, and the Court of Appeals ruling therefore must be reversed.

II. The Court of Appeals committed reversible error by failing to conduct the required *de novo* review of whether the evidence known to Officer Quinn was sufficient to establish probable cause to arrest the Appellee.

In the alternative even if it is decided that the Court of Appeals ruled correctly in refusing to apply the Collective Knowledge Doctrine in this case, the Court of Appeals still committed reversible error because the Court of Appeals failed to conduct the required *de novo* review of whether Officer Quinn's knowledge taken by itself was sufficient to establish probable cause in this case.

Questions involving legal principles and the application of law to established facts are reviewed *de novo. See Kothe v. State,* 152 S.W. 3d 54, 62-63 (Tex. Crim. App. 2004). Likewise mixed questions of law and fact that do not turn on evaluations of credibility and demeanor are also reviewed *de novo. Losereth v. State,* 963 S.W. 2d 770, 772 (Tex. Crim. App. 1998). And most importantly for this case, whether the police had probable cause to arrest is a legal question that must be reviewed *de novo.* See *Guzman v. State,* 955 S.W. 2d 85, 87 (Tex. Crim. App. 1997); *Ornelas v. United States*, 517 U.S. 690, 699 (1996). Thus the determination of whether the facts

known to Officer Quinn (as established by the trial court) were sufficient to establish probable cause is properly a legal question and should have been reviewed by the Court of Appeals *de novo*. Unfortunately, the Court of Appeals failed to fulfill this responsibility.

That the Court of Appeals abrogated its responsibility to conduct a *de novo* review as to whether Officer Quinn had probable cause to arrest the Appellee is clear from even a cursory reading of the Court of Appeals opinion. The Court of Appeals opinion quotes the trial court's findings of fact at length but does not provide any sort of analysis as to the legal significance of any of those facts. *Martinez*, 2017 WL 2200298 at 6. Moreover, the Court of Appeals' opinion specifically noted that "the trial court concluded that, based on the evidence presented-including circumstantial evidence- 'Quinn had no knowledge that [Martinez] probably committed the offense of public intoxication.'" *Id.* The Court of Appeals then included this statement as one of the trial court's "fact findings" and asserted that the Court of Appeals "may not disturb these findings." *Id.*

While the Court of Appeals is correct that it may not disturb the trial court's findings of fact, it was error for the Court of Appeals to treat the trial court's legal conclusion that Officer Quinn lacked probable cause (which is what a finding that "Quinn had no knowledge that [Martinez] probably

committed the offense of public intoxication" amounts to) as a finding of fact. As already discussed, determinations of whether the police had probable cause to arrest, must be reviewed *de novo*. *Guzman*, 955 S.W. 2d at 87; *Ornelas*, 517 U.S. at 699. Thus the Court of Appeals was obligated not merely to defer to the trial court's legal determination that Officer Quinn lacked probable cause to arrest the Appellee but to instead conduct their own legal analysis on that question. The Court of Appeals failed to fulfill this obligation and that failure was plain error.

To the extent that the Court of Appeals' opinion addresses its obligation to conduct a *de novo* review at all, all the Court of Appeals offered was a single conclusory sentence where the Court of Appeals asserted that "Reviewing the legal significance of the fact findings *de novo*, we conclude that the trial court did not err in its determination that the State failed to meet its burden to show that the search was reasonable." *Martinez*, 2017 WL 2200298 at 7. The Court of Appeals opinion thus does not even delineate what issues the Court of Appeals allegedly considered *de novo*, much less provide any legal analysis or reasoning.

Under Texas Rule of Appellate Procedure 47.4, appellate courts are expected to provide "the basic reasons" for the court's decisions. The Court of Appeals opinion clearly fails to satisfy this requirement as to the specific

issue of *de novo* review as the Court of Appeals providing no reasoning at all. But beyond that failure of appellate draftsmanship, it cannot seriously be held that the Court of Appeals conducted the required *de novo* review when all they provided was a single, conclusory statement with no legal reasoning or analysis. The one sentence in the Court of Appeals opinion addressing the question of *de novo* review is so perfunctory that it does not even constitute a token effort to perform the required *de novo* review.

A one sentence conclusory statement that provides no explanation, reasoning, or analysis for the Court of Appeals decision should not be considered adequate to establish that the required *de novo* review was performed in this case. Furthermore, even if that one sentence is somehow deemed sufficient to constitute *de novo* review, it still is inadequate to establish that the Court of Appeals conducted *de novo* review on the specific issue of whether Officer Quinn had probable cause to arrest the Appellee, since the previous paragraph in the Court of Appeals' opinion makes clear that the Court of Appeals simply adopted the trial court's legal determination on the question of whether Officer Quinn had probable cause rather than conduct its own legal analysis. See *Martinez*, 2017 WL 2200298 at 6.

Nor was this failure to conduct the required *de novo* review a harmless error. The State was clearly and severely harmed by the Court of Appeals'

refusal to perform the *de novo* review in this case because if the Court of Appeals had conducted the required *de novo* legal analysis, it would have been forced to conclude that Officer Quinn had sufficient facts so as to establish probable cause to arrest the Appellee for the offense of public intoxication in this case.

Probable cause to arrest is determined by looking at the totality of the circumstances known to see if the facts and circumstances known to the arresting officer(s) are sufficient to warrant a man of reasonable caution in the belief that a particular person has committed or is committing an offense. See *Amores v. State,* 816 S.W. 2d 407, 413 (Tex. Crim. App. 1991). And as previously discussed, probable cause is a relatively low standard of proof which requires proof "far short" of even the preponderance of evidence standard. See *Baldwin v. State,* 278 S.W. 3d 367, 371 (Tex. Crim. App. 2009). Thus it does not require a great quantum of evidence to establish probable cause, all that is required is sufficient evidence to establish a "fair probability" that a crime has been committed. *Parker,* 206 S.W. 3d at 599.

In this case the trial court specifically found that Officer Quinn observed the Appellee "yelling and screaming." [SCR-I-9]. Such obnoxious behavior from a suspect has consistently been found by Texas courts to be a strong indicator of intoxication. See *Quesada v. State*, 751

S.W. 2d 309, 311 (Tex. App.-San Antonio 1988, no pet)(finding belligerent behavior an indication of intoxication); *Mack v. State,* No. 14-03-0036-CR, 2014 WL 524879 at 3 (Tex. App.-Houston [14th Dist.] 2004, no pet)(mem. op. not designated for publication)(finding a suspect yelling to be a factor that supports a finding of intoxication); *Henderson v. State,* No. 06-13-00010-CR, 2013 WL 5763296 at 2-3 (Tex. App.-Texarkana 2013, no pet)(mem. op. not designated for publication)(finding a suspect screaming to be a factor that supports a finding of intoxication). Thus Officer Quinn having knowledge that the Appellee was yelling and screaming would go a long way by itself towards giving Officer Quinn the required probable cause to arrest the Appellee.

Nor was the evidence of the Appellee yelling and screaming, the only evidence that the trial court found that supports a legal conclusion that Officer Quinn had probable cause to arrest the Appellee for the offense of public intoxication. The trial court also found that this incident occurred outside a bar at approximately 11:30 at night and that when the officers arrived there was a "verbal disturbance" in process. [CR-I-26]. When the police are dealing with an intoxication related offense, a location right outside a bar late at night where there is a disturbance in process should certainly be considered a suspicious place. See *Cooper v. State,* 961 S.W.

2d 229, 232 (Tex. App.-Houston [1st Dist.] 1997, pet. ref'd)(finding that in a driving while intoxicated investigation that the parking lot outside a bar in the "wee hours" of the morning was properly held to be a suspicious place.) And when conduct occurs at a "suspicious place" that is an additional factor that can help establish probable cause. See *Dyar v. State*, 125 S.W. 3d 460, 464 (Tex. Crim. App. 2003).

In this case the Appellee was located outside a bar in the wee hours of the night in the middle of a verbal disturbance. Thus there was more than sufficient evidence to establish that this offense occurred at a suspicious place.

Now the State anticipates the Appellee will argue that the trial court never actually issued a finding declaring the location of the offense a "suspicious place" and thus the Court of Appeals was under no obligation to consider the location as a suspicious place in deciding if there was probable cause. However, determinations of whether a location is a "suspicious place" are themselves a mixed question of law and fact that do not turn on credibility or demeanor and thus must also be reviewed by the appellate courts *de novo.* See *State v. Parson*, 988 S.W. 2d 264, 267 (Tex. App.-San Antonio 1998, no pet). As such the Court of Appeals would have been obligated to consider the evidence the trial court found that shows the

offense happened at a suspicious place as part of their required *de novo* review of whether there was probable cause to arrest the Appellee, and since evidence clearly shows that the location was a suspicious place for the purposes of this offense, the Court of Appeals would have to have concluded that the Appellee's offense did occur at a suspicious place.

As such the trial court's findings of fact established both that Officer Quinn observed the Appellee yelling and screaming [SCR-I-9], and that there was a sufficient evidentiary basis to establish the Appellee was doing this at a "suspicious place" (specifically in a parking lot, outside a bar, late at night.) [CR-I-24]. Loud, obnoxious behavior that creates a disturbance and which is occurring outside a bar, late at night is textbook intoxicated behavior and given that this offense occurred in a public place (outside a bar) and involved another person, it is clear that there was sufficient evidence as a matter of law to establish that Officer Quinn had probable cause to arrest the Appellee for the offense of public intoxication.

The Court of Appeals had a clear legal duty to conduct a *de novo* analysis of whether Officer Quinn had probable cause to arrest the Appellee. The Court of Appeals failed to perform that duty. Their failure to perform the required *de novo* analysis caused great harm to the State since if the Court of Appeals had performed that analysis it would have been forced to

conclude that Officer Quinn's observations in conjunction with the fact that the offense occurred at a suspicious place were sufficient to establish probable cause. As such the Court of Appeals failure to conduct the required *de novo* review also constitutes reversible error.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the State prays that this Honorable Court reverse the judgment of the Court of Appeals and the trial court and remand this case to be heard on the merits.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(3), I, Brendan Wyatt Guy, Assistant Criminal District Attorney, Victoria County, Texas, certify that the number of words in Appellant's Brief submitted on August 4, 2017, excluding those matters listed in Rule 9.4(i)(3) is 7,040.

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CERTIFICATE OF SERVICE

I, Brendan Wyatt Guy, Assistant Criminal District Attorney, Victoria County, Texas, certify that a copy of the foregoing brief was sent by electronic mail to Luis Martinez, P. O. Box 410, Victoria, Texas, 77901, Attorney for the Appellee, Roger Anthony Martinez, and by United States mail to Ms. Stacy M. Soule, P. O. Box 13046, Capitol Station, Austin, Texas 78711, State Prosecuting Attorney, on this the 4th day of August, 2017.

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